IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.6876 OF 2003

The Principal,
KIT's College of Engineering
and Anr. ..Petitioners

V/s.

Shri Dyandev D.Jondhalekar & Ors. ..Respondents

Ms.Ranjana Todankar i/by Mr.S.S. Pakale for
the petitioners.

Shri M.S.Topkar for Respondent No.1.

Coram : R.S.Mohite,J

Date : 17.11.2005.

PC

1. In this petition rule was issued on 10.10.2003 and the rule on interim relief was made returnable after 8 weeks. All the respondents are served. Respondent No.1 is the main contesting party and is represented through an Advocate. By consent of both sides, the petition which has wrongly been shown for admission is taken up for hearing.

2. This petition impugns the Judgment and order passed by the Presiding officer of the Pune/Shivaji University & College Tribunal, Pune, dated 5.8.2003. By the impugned Judgment and order, an appeal filed

by respondent no.1 before the Tribunal challenging his dismissal was allowed and disposed of. The order of dismissal inflicted upon respondent no.1 was held to be illegal and improper and the petitioners were directed to immediately re-instate the appellant in service. A glance at the reasoning indicates that the Presiding officer set aside the order of dismissal on the footing that there was no legal evidence in the case. This finding was arrived at on the basis that the evidence of Professor Deshpande could not be treated to be the evidence of a witness for the prosecution.

3. Both the Advocates agree that in case the departmental enquiry is held to be defective, the employer should have been given a chance to prove their case by leading evidence before the College Tribunal. In this regard reliance is placed upon the Judgment of the High Court in the case of **P.D.L.College of Commerce & Economic V. A.M.Rangpara reported in 1988 Lab.I.C. 1567.** In that case a single Judge of this Court found that the order of termination of a lecturer of a college was unfair and unjust and in violation of principles of natural justice. The single Judge observed that in the circumstances, the matter could be remitted to College Tribunal for further enquiry. The single Judge discussed the provisions of Sections 41 & 42 of the Bombay Universities Act 1974 which is paramateria

with the provisions of Sections 60 & 61 of the Maharashtra Universities Act 1994.

4. On the facts of the present case, it is noticed that the five charges against respondent no.1 were serious. In my view, the impugned Judgment and order dated 5.8.2003 therefore, requires to be set aside and the matter is required to be remitted back to the Shivaji/Pune University Tribunal for the purpose of permitting both the parties to lead evidence on the charges and for re-deciding the matter. It may be mentioned here that Counsel for both the parties are also agreeable for the remand of the matter and for leading of evidence.

5. In the circumstances, rule is made absolute in the aforesaid terms and the petition stands finally disposed of. It is found that the allegation pertain to the year 1998 and it is expected that the College Tribunal will decide the matter expeditiously and preferably by 31.6.2006.

(R.S.Mohite,J)